

# TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman  
Lynn Greer, Director  
Melvin Malone, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

March 6, 2002

Mr. Harold DePriest, President and CEO  
Electric Power Board of Chattanooga  
Telecommunications  
536 Market Street  
P.O. Box 182255  
Chattanooga, Tennessee 37422-7255

Dear Mr. DePriest:

97-07488

On February 2 1999, the Tennessee Regulatory Authority ("TRA") approved the Application of the Electric Power Board of Chattanooga ("EPB") for a Certificate of Public Convenience and Necessity ("CCN") to provide Intrastate Telecommunications Service in the State of Tennessee, Docket No. 97-07488. EPB's Application was made pursuant to and considered in light of the criteria for granting a certificate of public convenience and necessity as set forth in Tenn. Code Ann. § 65-4-201 et seq., Tenn. Code Ann. § 7-52-401 et seq., and Tenn. Code Ann. § 65-5-212.

As a municipally owned electric utility, the EPB is subject to the requirements in Tenn. Code Ann. § 7-52-401 – 7-52-407. Additionally, as a condition of approval, the Directors of the TRA requested The Tennessee Cable Telecommunications Association ("TCTA") and EPB to consult and file Proposed Conditions (*Second Revised Proposed Conditions to Certificate of Public Convenience and Necessity to Ensure Statutory Compliance Filed on Behalf of the Tennessee Cable Telecommunications Association and Electric Power Board of Chattanooga*), in the above Docket. The Parties agreed that in order to comply fully with the prohibition against subsidies found in Tenn. Code Ann. § 7-52-402 and § 7-52-405 regarding cost imputation, the EPB should expand its accounting systems and modify portions of its accounting procedures. Attached are the Order which memorializes the conditions granting EPB the CCN and The *Second Revised Proposed Conditions to Certificate of Public Convenience and Necessity to Ensure Statutory Compliance Filed on Behalf of the Tennessee Cable Telecommunications Association and Electric Power Board of Chattanooga* in Docket No. 97-07488, which provides for specific annual Reporting Requirements to the TRA by the Telecommunications Division.

The TRA has not received any of the information outlined in the Reporting Requirements as filed in Docket No. 97-07488. Please provide the above information for year ending December 31, 2000 by March 15, 2002. Also, please provide for year ending December 31, 2001 by May 1, 2002.

If you have any questions concerning this request or need additional information, please call Patsy Fulton at 615-741-2904 ext. 193.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Waddell". The signature is stylized with a large, looped "W" and a long horizontal stroke at the end.

David Waddell  
Executive Secretary

Attachments (2)

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE

May 10, 1999

IN RE: APPLICATION OF ELECTRIC POWER )	
BOARD OF CHATTANOOGA FOR A )	
CERTIFICATE OF PUBLIC CONVENIENCE )	DOCKET NO. 97-07488
AND NECESSITY TO PROVIDE INTRASTATE )	
TELECOMMUNICATIONS SERVICE )	

---

**ORDER APPROVING APPLICATION FOR CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

---

On February 2, 1999, this matter came before the Tennessee Regulatory Authority ("Authority"), for consideration of the Application of Electric Power Board of Chattanooga ("EPB") for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Service (the "Application").

**LEGAL STANDARD FOR GRANTING CCN**

EPB's Application was made pursuant to and considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in Tenn. Code Ann. § 65-4-201 et seq., Tenn. Code Ann. § 7-52-401 et seq. and Tenn. Code Ann. § 65-5-212.

Tenn. Code Ann. § 65-4-201 provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the

construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . .

\*\*\*

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

\*\*\*

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority: (1) a plan containing the providers' plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

Because EPB is a municipal electric service provider, EPB's Application is also subject to the requirements of Tenn. Code Ann. § 7-52-401 et seq. Tenn. Code Ann. § 7-52-401 provides, in pertinent part:

Every municipality operating an electric plant, whether pursuant to this chapter or any other public or private act or the provisions of the charter of the municipality, county or metropolitan government, has the power and is

authorized, on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant or equipment for the provision of telephone, telegraph, telecommunications services, or any other like system, plant, or equipment within and/or without the corporate or county limits of such municipality and, with the consent of such other municipality, within the corporate or county limits of any other municipality, in compliance with title 65, chapters 4 and 5, and all other applicable state and federal laws, rules and regulations. A municipality shall only be authorized to provide telephone, telegraph or telecommunications services through its board or supervisory body having responsibility for the municipality's electric plant. . . . Notwithstanding § 65-4-101 (a)(2) or any other provision of this code or of any private act, to the extent that any municipality provides any of the services authorized by this section, such municipality shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certificated providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to such municipality's provision of telephone, telegraph and communication services.

To avoid cross-subsidization problems among the telecommunications and electric divisions of a municipal electric company, Tenn. Code Ann. § 7-52-402 provides:

A municipality providing any of the services authorized by 7-52-401 shall not provide subsidies for such services. Notwithstanding the limitations set forth in the preceding sentence, a municipality providing such services shall be authorized to:

(1) Dedicate a reasonable portion of the electric plant to the provision of such services, the costs of which shall be allocated to such services for regulatory purposes; and

(2) Lend funds, at a rate of interest not less than the highest rate then earned by the municipality on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any of the services authorized under 7-52-401; provided, that such interest costs shall be allocated to the cost of such services for regulatory purposes. Any loan of funds made pursuant to this section shall be approved in advance by the state director of local finance and shall contain such provisions as are required by the state director.

With respect to the applicability of other regulatory laws and rules to municipalities, Tenn. Code Ann. § 7-52-403 provides:

(a) To the extent that it provides any of the services authorized by § 7-52-401, a municipality has all the powers, obligations and authority granted entities providing telecommunications services under applicable laws of the United States or the state of Tennessee. To the extent that such authority and powers do not conflict with the provisions of title 65, chapter 4 or 5, and any rules, regulations, or orders issued thereunder, a municipality providing any of the services authorized by § 7-52-401 has all the authority and powers with respect to such services as are enumerated in this chapter.

\*\*\*

Additionally, Tenn. Code Ann. § 7-52-405 establishes the criteria for a municipality's allocation of the costs of providing its telecommunications services.

### **INTERVENORS**

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. The following parties sought and were granted intervention: American Communications Services, Inc. ("ACSI"); AT&T Communications of the South Central States, Inc. ("AT&T"); BellSouth Telecommunications, Inc. ("BellSouth"); Consumer Advocate Division of the Attorney General's Office ("CAD"); MCI Telecommunications Corporation ("MCI"); NEXTLINK of Tennessee, L.L.C. (NEXTLINK"); Tennessee Cable Telecommunications Association ("TCTA"); and, Tennessee Power Company ("TPC").

### **EPB'S HEARING**

At the hearing held on October 13, 1998,<sup>1</sup> Carlos C. Smith, William C. Carriger, and Mark W. Smith, of Strang, Fletcher, Carriger, Walker, Hodge & Smith PLLC, 400 Krystal

---

<sup>1</sup> A hearing was originally scheduled for December 2, 1997, however, upon EPB's request, the matter was continued and finally heard on October 13, 1998.

Building, One Union Square, Chattanooga, Tennessee 37402 represented EPB. In addition, Harold Edward DePriest, President and Chief Executive Officer of EPB; Robert Nyswaner, Chief Financial Officer for Globe Telecommunications; Douglas A. Dawson, Principal of Competitive Communications Group; Rose M. Baxter, Vice President of the Accounting Division of EPB; and Ronald Fugatt, Vice President of EPB, were made available for presentation of testimony and examination by the Authority. Upon the conclusion of the hearing, the Authority requested and agreed that the submission of the most recently audited financial statements of Globe and ITC would be accepted as late-filed exhibits under protective order (proprietary agreement). Finally, the Authority requested the parties to brief the following legal issue: Whether Globe Telecommunications, Inc. ("Globe") is required to obtain a CCN to operate as a CLEC because of its ownership and operation of a switch in Tennessee? Pursuant to the Authority's request, the parties filed briefs addressing this issue on November 3, 1998.<sup>2</sup>

---

<sup>2</sup> Additionally, on November 3, 1998, EPB and TCTA filed the Proposed Conditions to which EPB should be subject to if it is granted a CCN. These conditions contain an agreement between EPB and TCTA on:

- 1) the assignment and allocation of costs which addresses the treatment of directly assignable costs, directly attributable costs, indirectly attributable costs, unattributable costs, intra-company loans and taxes;
- 2) transaction with affiliates which addresses the treatment of transaction between the electric division and the telecommunications division such as asset acquisition and provision of services;
- 3) balance sheet accounting which addresses the appropriate accounting treatment for all such items;
- 4) accounting for revenue and expenses which addresses the appropriate accounting for all such items;
- 5) code of conduct which addresses regulatory compliance, treatment of similarly situated parties, use of customer information, billing and collecting for telecommunication services, inserts in bills, separate telephone numbers for the electric and telecommunications divisions, anti-competitive inducements, sales references by utility personnel, joint marketing of regulated and non-regulated services, loan and credit guarantees and other general code of conduct provisions;
- 6) reporting requirements which detail the specific information to be reported annually to the TRA.

The agreed terms also state that EPB shall provide access to the books, accounts, memoranda, contracts and records of the electric system and the telecommunications division and any other affiliated company upon request by the Authority. Provisions for internal and independent audits are also addressed in the proposed conditions and EPB will provide the results of any such audits to the Authority. Finally, EPB will provide the Authority access to company personnel to respond to inquiries and shall submit any reports required by the Authority.

## POST HEARING

This matter was brought before the Authority on January 12, 1999, for a decision on the merits of EPB's Application. Prior to the deliberations, however, counsel for EPB announced that certain circumstances relative to and relied upon by EPB in support of its Application had changed since the conclusion of the hearing and the closing of the evidentiary record. As a result of EPB's announcement, the Authority postponed a decision on the merits and appointed Chairman Melvin J. Malone as Hearing Officer to determine the status of this case.

At a Status Conference convened without objection of the parties and held on January 12, 1999, it was determined that the following circumstances, as announced by EPB's counsel, were not part of the evidentiary record in this matter:

1. Globe had canceled its contract with EPB for assistance in purchasing and/or leasing telecommunications equipment, the provisioning of training for EPB employees and the development of EPB's fiber optic network on or about December 31, 1998;<sup>3</sup>
2. Globe reinstated its contractual relationship with EPB in some form prior to the January 12, 1999, Authority Conference, but communicated to EPB that Globe retained the right to sever the relationship before January 31, 1999, and in any event, would take a "lesser role" than that contemplated under the contract between Globe and EPB that had been made a part of the evidentiary record herein; and

---

<sup>3</sup> Tenn. Code Ann. § 65-4-201(c)(1) requires that an applicant for a Certificate of Public Convenience and Necessity to provide telecommunications services must possess "sufficient managerial, financial and technical abilities to provide the applied for services." In EPB's Restated Application, Globe is referenced in the sections on managerial fitness and technical fitness. Moreover, Mr. Robert Nyswaner of Globe filed pre-filed testimony in this matter and testified at the hearing in support of the Application. The contract between EPB and Globe was also submitted in support of EPB's Application.

Although Mr. Carriger contended on January 12, 1999, that EPB met the technical fitness requirement of Tenn. Code Ann. § 65-4-201(c)(1) regardless of any external contractual arrangements, neither the Application nor the testimony produced at the hearing support this contention.



3. Mr. Robert Nyswaner, a former Globe employee who was originally retained by EPB as a consultant is involved in the process of becoming a permanent full-time employee of EPB.<sup>4</sup>

Under these circumstances, the Hearing Officer concluded that the evidentiary record did not reflect EPB's current governing factors on which a decision must be based. The Hearing Officer therefore determined that EPB should file supplemental testimony and that all parties should be given the opportunity to rebut the same. It was also determined that after the filing of testimony, absent a request for a hearing from any party, the parties were required to submit an Agreed Order permitting the entry of the supplemental and rebuttal testimony into the evidentiary record.<sup>5</sup>

Subsequently, on January 19, 1999, EPB filed the Amendment to its Application. After the filing of testimony and EPB's Amendment, none of the intervenors requested a hearing. On January 25, 1999, TCTA and EPB filed a Proposed Condition to the Certificate of Public Convenience and Necessity Relative to Contractual Arrangements.<sup>6</sup> An Agreed order was filed on January 27, 1999.

The Directors of the Authority considered this matter on the merits at a regularly scheduled Authority Conference held on February 2, 1999. At that Conference, the Authority granted EPB's Application based upon the following findings of fact and conclusions of law:

---

<sup>4</sup> On April 21, 1999, EPB notified the Authority by letter dated April 19<sup>th</sup> that Mr. Nyswaner, effective as of the date of the correspondence, had joined EPB as the Senior Vice President of Telecommunications.

<sup>5</sup> The Agreed Order would also address any documents submitted with the supplemental information or rebuttal testimony that was not already a part of the evidentiary record in this matter.

<sup>6</sup> The parties agreed that as a condition to the grant of a CCN, any agreements between EPB, (on behalf of its Telecommunications Division) and any other entity "which provides for the joint ownership or joint ownership of control of assets, [together with] the sharing of profits and losses, or the sharing of [gross] revenues" would require approval of the Authority.

## **I. APPLICANT'S QUALIFICATIONS**

1. EPB is a Board of the City of Chattanooga, Tennessee, a Tennessee municipal corporation. EPB was originally created under Chapter 455 of the Private Acts of the 1935 Tennessee General Assembly and currently provides retail electric power to both business and residential customers in the City of Chattanooga, most of Hamilton County, as well as parts of Bledsoe, Bradley, Marion, Rhea and Sequatchie Counties in Tennessee, and parts of Catoosa, Dade and Walker Counties in Georgia.

2. EPB's principal place of business is located at 536 Market Street, Chattanooga, Tennessee, 37402. The phone number is (423) 265-2000 and the fax number is (423) 756-5861.

3. To demonstrate its financial capability to provide the proposed services, EPB provided the financial statements for fiscal years ending June 30, 1997 and 1998. Further, EPB's Board of Directors have demonstrated their commitment in assisting and supporting EPB's telecommunications success by their approval of a ten million dollar (\$10,000,000) interdivisional loan. Therefore, based upon the financial data presented herein, the Authority concludes that EPB possesses the financial ability to provide the services it proposes to offer.

4. With respect to EPB's managerial and technical ability, compelling evidence was presented to demonstrate that EPB possesses a very seasoned management staff. The record also demonstrates that EPB has been effectively managing its 153,000 customer business for sixty (60) years, and that the company currently employs sophisticated technical systems in the provision of its electric utility services. EPB has also retained the services of an independent telecommunications consulting group, as well as Robert Nyswaner, who possesses twenty-five (25) years of telecommunications experience. The Authority concludes that EPB possesses the

requisite expertise to provide the applied for services, based upon the foregoing demonstration of managerial fitness and technical ability.

5. EPB has represented that it will adhere to all applicable policies, rules and orders of the Authority.

6. The record in this cause demonstrates that EPB is currently authorized to provide telecommunications services in Georgia.

## **II. PROPOSED SERVICES**

1. EPB intends to provide a full range of telecommunications services as typically provided by an incumbent local exchange telephone company including, but not limited to, dedicated and switched access services, private line services, local dial tone, 911 services and enhanced services. EPB may augment its service offerings in the future and add new services and capabilities as they become available from the Incumbent Local Exchange Carrier ("ILEC").

2. EPB intends to operate as a facilities-based local exchange provider, initially utilizing excess capacity on its fiber optics network and supplementing its services by reselling services of the ILEC. EPB also intends to provide directory assistance, dual party relay service, directory listing and access to 911 emergency services.

3. EPB does not intend to serve any areas currently being served by an incumbent local telephone company with fewer than 100,000 total access lines, as proscribed by Tenn. Code Ann. § 65-4-201(d), unless and until that statute and the Authority's orders enforcing that statute are preempted by law.

4. On behalf of its Telecommunications Division, EPB will not contract or enter into any agreement with another entity that provides for the joint ownership or joint control of assets, the sharing of profits and losses, or the sharing of revenues until the Tennessee Regulatory

Authority approves such contract or agreement on petition and after notice and opportunity to be heard has been extended to interested parties. This provision shall not apply to any service or transaction which is not subject to regulation by the Tennessee Regulatory Authority.

### **III. PUBLIC CONVENIENCE AND NECESSITY**

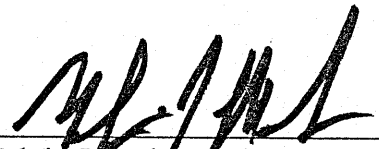
Upon a review of the Application and the record in this matter, the Authority finds that approval of EPB's application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services market in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

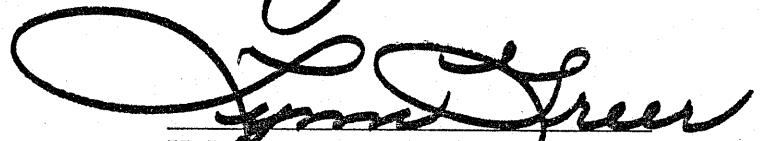
### **IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM**

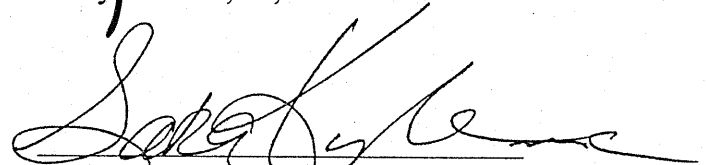
1. EPB has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.
2. EPB has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

**IT IS THEREFORE ORDERED THAT:**


1. The Application of Electric Power Board of Chattanooga is approved; and
2. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
\_\_\_\_\_  
Melvin J. Malone, Chairman

  
\_\_\_\_\_  
H. Lynn Greer, Jr., Director

  
\_\_\_\_\_  
Sara Kyle, Director

ATTEST:

  
\_\_\_\_\_  
K. David Waddell, Executive Secretary

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE

---

IN RE:

APPLICATION OF ELECTRIC	)	
POWER BOARD OF CHATTANOOGA	)	
FOR A CERTIFICATE OF PUBLIC	)	DOCKET NO. 97-07488
CONVENIENCE AND NECESSITY	)	
TO PROVIDE INTRASTATE	)	
TELECOMMUNICATIONS SERVICES	)	

---

***SECOND REVISED PROPOSED CONDITIONS TO CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO ENSURE STATUTORY COMPLIANCE FILED  
ON BEHALF OF THE TENNESSEE CABLE TELECOMMUNICATIONS  
ASSOCIATION AND ELECTRIC POWER BOARD OF CHATTANOOGA***

---

The Tennessee Cable Telecommunications Association ("TCTA"), and the Electric Power Board of Chattanooga ("EPB"), the Applicant herein, file this revised joint proposal of conditions to which the Applicant's Certificate of Public Convenience and Necessity should be subject if it is later granted in this proceeding by the Tennessee Regulatory Authority ("TRA"). In preparing this second revised joint proposal, the TCTA and the Electric Power Board of Chattanooga have consulted pursuant to the request of the Directors of the TRA at the initial hearing on April 23, 1998, and at the hearing on October 13, 1998, and have agreed to the contents of this proposal with two exceptions which are noted. The other intervenors have been furnished copies and an opportunity to comment and join in if they wished.

## I.

### INTRODUCTION

The EPB filed an Application with the TRA on October 21, 1997 for a Certificate of Public Convenience and Necessity to become a Competing Telecommunications Service Provider as defined by Tennessee Code Annotated § 65-4-101 and § 65-4-201<sup>1</sup>. As a municipally owned electric utility, the EPB is subject to the requirements contained in T.C.A. §§ 7-52-401 - 7-52-407 which are not applicable to other Competing Telecommunications Service Providers. At the initial hearing of this cause on April 23, 1998, certain intervenors, as well as the Directors, expressed a concern regarding the additional statutory requirements applicable to the Applicant in this proceeding, EPB. At the request of the Directors, the TCTA and the EPB have conferred in an attempt to identify a process which could be designed to ensure compliance with these additional statutory requirements. On September 9, 1998, the TCTA and the EPB filed proposed conditions to the Certificate. Prior to the hearing of this cause on October 13, 1998, the TCTA and the EPB negotiated further revisions, and the TCTA and the EPB filed revised proposed conditions at the hearing of this cause on October 13, 1998.

At the hearing of this cause on October 13, 1998, the Directors requested that the parties further consult regarding issues raised in that hearing and that the parties include further revisions to the revised proposed conditions, to the extent that such revisions could be worked out among the parties. These second revised proposed conditions incorporate those changes.

The parties agree that in order to comply fully with the prohibition against subsidies found in T.C.A. § 7-52-402 and to comply with the requirements of §§ 7-52-402, 7-52-404, and

---

<sup>1</sup>For purposes of this joint proposal, the term "telecommunications services" are those services which require TRA authorization as a Competing Telecommunications Service Provider.

7-52-405 regarding cost imputation, the EPB should expand its accounting systems and modify portions of its accounting procedures. Explained below are the essential methods that EPB should adopt to properly separate telecommunications from electric power accounting data, provide assurance that subsidization does not occur, and to properly allocate cost.

## II.

### PURPOSE

The EPB has formed a telecommunications service division to achieve organizational and accounting separation from its electric power service operations. The ultimate goal of establishing rules and regulations to govern the EPB's affiliate transactions is to ensure just and reasonable rates for the ratepayers of the electric utility. Insuring just and reasonable rates that remain subject to regulation requires guarding against cross-subsidy of the EPB's ventures, principally its provision of telecommunications services. The rules and regulations outlined in the following sections are intended to discourage the EPB from subsidizing the costs of the newly created telecommunications division by shifting costs to the activities of the electric system. Furthermore, the rules and regulations are crafted to assure that ratepayers share in any efficiencies generated from joint use of facilities and services by the telecommunications division.

For the telecommunications division, EPB is establishing a telecommunications accounting system that is distinguishable from its electric accounting system. The new telecommunications system must enable telecommunications accounting transactions to be identified and recorded in a set of accounts distinct from the electric accounting records.

EPB has designed a chart of accounts for the telecommunications accounting system that utilizes the Federal Communications Commission's Uniform System of Accounts for Telecommunication Companies as defined in the Code of Federal Regulations, Title 47, Part 32.



EPB's use of these accounts will be in accordance with the Part 32 account definitions and will simplify telecommunications reporting to the TRA. All of the accounting entries recorded in these accounts shall be directly related to telecommunications service or shall be the result of an equitable and supportable allocation between telecommunications service and electric service.

Although all of the telecommunications accounting transactions, both direct and allocated, will originate in EPB's electric accounting system, they will be uniquely identified by means of predefined account number ranges or by assignment to a cost center specifically designated to accumulate telecommunications accounting activity. At month-end, these transactions will be summarized and transferred to the appropriate Part 32 accounts residing in the telecommunications accounting segment of the general ledger system. From the account balances maintained in this segment, the telecommunications accounting records will be available for reporting and historical analysis. The telecommunications financial statements prepared by EPB will present all of the accounting elements pertaining to its telecommunications operations and will be independent of EPB's electric financial statements.

Described below are the accounting principles and procedures EPB shall adopt to maintain its telecommunications and electric accounting records in conformance with the statutory requirements.

### III.

#### Assignment and Allocation of Costs

Electric services provided to the telecommunications division shall be charged to the telecommunications activity at the current electric rates and credited to the revenue account of the electric system for that service.

Costs assigned to and allocated between the electric system and the telecommunications division shall be at fully allocated costs. In the case of an annual charge for facilities, the fully allocated costs should include at a minimum property taxes, depreciation expenses, maintenance expenses and a rate of return on the investment in the asset. In the case of personnel, the fully allocated costs should include all employee benefits, payroll taxes, insurance, pension, and post-retirement benefits other than pension. Cost assignment and allocation should be based upon the following principles:

Directly Assignable Costs - costs of assets and resources incurred exclusively for providing either electric utility services or telecommunications activities.

Directly Attributable Costs - costs of assets and resources incurred to provide both electric utility services and telecommunications activities that can be apportioned using direct measures of cost causation.

Indirectly Attributable Costs - costs of assets and resources incurred to provide both electric utility services and telecommunications activities which require an indirect measure of cost causation in order to relate the costs to the final objective.

Unattributable Costs - costs of assets and resources shared between electric utility services and telecommunications activities for which no causal relationship exists. These types of costs are accumulated and allocated to both the electric utility services and telecommunications activities through the use of a General Allocator computed by using the ratio of expenses directly assigned or attributed to electric utility services and telecommunications activities. To calculate the unattributable costs to be allocated to the telecommunications division, the unattributable costs would be multiplied by a fraction with the expenses directly assigned and attributed to telecommunications services as the numerator and the sum of the expenses directly assigned and attributed to telecommunications plus the expenses directly assigned and attributed to electric utility services as the denominator. The cost of goods (specifically wholesale power and wholesale telecommunications services) shall be excluded from the calculation of the directly assigned and attributed expenses.

Intracompany Loans - The current market rate of interest will be applicable to loans made by one division to the other division which rate of interest will not be less than the highest rate earned by the Electric Power Board of Chattanooga on its invested funds.

Taxes - The EPB will make tax equivalent payments with respect to its telecommunications services in accordance with T.C.A. § 7-52-404 and shall allocate for regulatory

purposes to the cost of its telecommunications services in an amount equal to a reasonable determination of state, local and federal taxes which would be required to be paid for each fiscal year by a nongovernmental corporation that provides the identical services.

#### IV.

##### Transactions with Affiliates

Charges for assets purchased by or transferred to the electric utility system from the telecommunications division shall be recorded in the operating accounts of the electric utility division at the invoice price if that price is determined by a prevailing price held out to the general public in the normal course of business. If a prevailing price for the assets received by the electric utility system is not available, the charges recorded by the electric utility system for such assets shall be the lower of their cost to the originating activity and the affiliated telecommunications division less all applicable valuation reserves, or their fair market value.

Assets sold or transferred from the electric utility system to the telecommunications division shall be recorded as operating revenues, incidental revenues or asset retirements according to the nature of the transaction involved. If such sales are reflected in tariffs on file with the TRA or in a prevailing price held out to the general public, the associated revenues shall be recorded at the prices contained therein in the appropriate revenue accounts. If no tariff or prevailing price is applicable, the proceeds from such sales shall be determined at the higher of costs less all applicable valuation reserves, or estimated fair market value of the asset.

Services provided to an affiliate pursuant to a tariff filed with a regulatory authority shall be recorded in the appropriate revenue accounts at the tariffed rate. Services provided by the telecommunications division to the electric utility system when the same services are also provided by the telecommunications division to unaffiliated parties shall be recorded at the market rate. If the electric system provides substantially all of a service to or receives

substantially all of a service from the telecommunications division which are not also provided to unaffiliated parties, the services shall be recorded at cost which shall be determined in a manner that complies with the standards and procedures of the apportionment of joint and common costs between the electric system and telecommunications division operations of the EPB. The revenues for all transactions involving charges between the electric system and the telecommunications divisions shall be booked into operating revenue accounts if corresponding costs are recorded in operating expense accounts.

## V.

### Balance Sheet Accounting

Cash - The telecommunications division will maintain bank accounts separate from those of the electric system. All telecommunications cash receipts from customers and other external parties will be deposited directly in the telecommunications division bank accounts. Telecommunications disbursements will originally be paid from electric system bank accounts, but the telecommunications division will reimburse the electric system for the total at month-end via electronic funds transfer. Services performed by one division for the benefit of the other division will be handled by invoicing and payment processing just as with any external entity. Due to the balances maintained, there should be no bank charges assigned or allocated to either the electric system or the telecommunications division.

Receivables (External) - Telecommunications receivables will be fully segregated from electric receivables. Both billings and payments for telecommunications service will be recorded directly to appropriate telecommunications receivable accounts as they occur.

Payables (External) - Telecommunications payables to external parties will be recorded in the electric system's accounting system and will be paid from electric system bank accounts.

To maintain their telecommunications identity, these amounts will be recorded to telecommunications account numbers or in the telecommunications cost center. At month-end, a payable for the total reimbursement due to the electric system will be recorded in the telecommunications division's accounting system.

Intracompany Receivables and Payables - The electric system and the telecommunications division each will carry a receivable and payable account for intra-company transactions with the other. These accounts will contain billings and other amounts designated for such fund transfers between the two as will be needed to maintain a proper accounting separation of telecommunications and electric financial activity. Under this arrangement all intra-company transactions will be cash-based and will involve the transfer of funds. In determining the terms and conditions applicable to these intracompany receivables and payables, both parts of EPB will utilize the same standards that are applicable to outside parties.

Materials - All material assets will initially be recorded in the inventory accounts of the electric system. Material issues will either be directly assigned to telecommunications or electric or will be allocated if joint work is performed on a work order. Currently, the expenses of the provisioning and warehouse functions are loaded as an additive to the cost of each material item issued from inventory. This procedure will be applied to telecommunications material issues also.

Plant Assets - All plant assets will initially be recorded in the plant accounts of the electric system. The accounting procedures to be applied to plant assets that will be wholly or partially used to provide telecommunications service are explained below.

Plant Dedicated to Telecommunications Service - Some plant assets may be bought or constructed solely for telecommunications service purposes for which the telecommunications

division will fully reimburse the electric system. Other plant assets, such as a fiber optic route, will be constructed to provide both telecommunications and electric service. Both types of assets will be recorded in the electric system's plant accounts when installed, and a determination will be made regarding the portion that will be used by the electric system. The remaining portion, including excess capacity, will be purchased by the telecommunications division (with the telecommunications division paying the proportionate cost as shown on the electric system books) and recorded as a telecommunications asset in the appropriate telecommunications plant account. In the electric system's plant records, this telecommunications plant portion will be reported as a contra-asset. On the electric books it will be referred to as Plant Dedicated to Telecommunications in order to specifically identify it as plant used to provide telecommunications service. Retirement accounting entries for plant that has been apportioned between telecommunications and electric plant records will be divided between telecommunications and electric according to the average installation apportionment for the specific type of plant asset.

Plant Leased to Telecommunications Division - Plant assets such as poles, land, and buildings, which are jointly used by both the electric system and the telecommunications division but which are not easily physically divisible and assignable between the two, will remain entirely in the electric plant accounts and be leased by the telecommunications division rather than purchased from the electric system. All leases will be calculated in accordance with applicable FCC Part 32 definitions. The use of poles for pole attachments, which is currently already leased to other entities, and any similar items will be leased to the telecommunications division at the highest rate paid by an outside party for comparable pole attachments. For other leased plant, the electric system will develop a lease price that will fully cover the depreciation, maintenance,

and other loaded costs of the asset used. For example, floor space in the electric buildings will be leased to the telecommunications division on a per-square-foot basis.

Construction Work in Progress - EPB currently uses a work order system very similar to those used by telecommunications companies. The cost of materials, labor, vehicles and heavy equipment, benefits, and other items that are required to complete a telecommunications construction job will be processed through this system and separately identified from the costs of electric work. The accounting procedures for determining and recording these costs are described below in the Accounting for Revenues and Expenses section.

Depreciation - All depreciable assets recorded in the plant accounts of the telephone division will be depreciated in the telecommunications accounting system. Depreciation rates will reflect industry normal life spans. Like assets of the electric system and the telecommunications division will be depreciated using the same depreciation rate.

Amortization - Non-tangible assets and assets such as capitalized software will be amortized over industry normal life spans.

## VI.

### Accounting for Revenues and Expenses

Revenues - Telecommunications service revenues will be recorded directly to telecommunications revenue accounts as they are earned.

Labor Expenses - Labor for field employees and contractors performing telecommunications operation and maintenance work will be directly assigned to telecommunications expense accounts at the time such work occurs or will be appropriately allocated if telecommunications and electric work are jointly performed on a work order. Labor for the majority of office personnel will be allocated between telecommunications and electric on the basis of percentages

determined by time studies, which will be updated no less frequently than annually. As an example, the labor for accounting personnel will be divided between telecommunications and electric expense accounts according to a periodic analysis of the accounting functions performed by each employee. Such labor allocations will also be appropriately revised whenever work assignments or other pertinent circumstances change. Labor expenses for management and certain other administrative personnel will be allocated as a general and administrative expense as described in a later section.

Labor-Related Expenses - Training hours and time spent away from work due to sick leave, holidays, vacations, etc. will be accumulated monthly at the department level and prorated to the same accounts and in the same proportion as the department's labor dollars are charged. The allocation of payroll taxes and employee insurance to telecommunications and electric accounts is described in a later section.

Other Expenses - EPB's expense account numbers include very detailed functional codes for tracking specific expense categories such as supplies, membership dues, publications, postage, etc. Some expenses will be directly assigned to telephone, to electric, or to both if a basis for direct assignment can be established. An example would be travel, which can be directly assigned according to the specific circumstances of a trip taken. Other expenses such as departmental office supplies will be allocated, using labor dollars, to the same accounts where the department's labor is directly recorded, whether telephone, electric, or both. The following explains the basis for allocation of certain general and administrative expenses and of several other major expense categories that will need to be allocated between telephone and electric accounts:

Payroll Taxes - EPB will allocate payroll taxes on the basis of total labor dollars.



Employee Insurance Expenses - EPB expenses for the employee retirement plan, disability insurance, term life insurance, and other benefits that are directly related to labor expenses will be allocated using total labor dollars. Other expenses such as health and dental insurance that are not a function of labor dollars will be allocated on the basis of labor hours.

Other Insurance Expenses - Property and liability insurance expenses will be allocated as appropriate. For example, the allocation for insurance on assets will be determined by the assets insured. Insurance on vehicles is currently distributed to accounts as part of the vehicle expense clearing process. Some insurance policies, such as general liability, have no directly assignable basis and will be allocated using the General Allocator.

Human Resources - The labor and expenses for the operation of the Human Resources Department will be allocated to the telecommunications division and the electric system using *the General Allocator*.<sup>2</sup>

Management and Other Administrative Personnel - Labor and expenses that cannot be directly assigned to telecommunications and electric accounts will be allocated using the General Allocator.

Board of Directors' Expenses - These expenses will be allocated using the General Allocator.

Services of City of Chattanooga - EPB currently pays the City of Chattanooga a monthly fee for two City officials to sign checks issued by EPB. These fees will be allocated using the General Allocator.

---

<sup>2</sup>The EPB contends that labor and expenses for the operation of the Human Resources Department should be allocated using total labor dollars. The parties disagree on the appropriate allocator for the expense.

Other General and Administrative Expenses - Only a relatively small portion of these expenses cannot be directly assigned or have no easily determinable allocation basis. These expenses will be allocated between telecommunications and electric using the General Allocator.

Telecommunications Expense - It is anticipated that telecommunications service for the electric system will be purchased from the telecommunications division. The electric system will be treated as any other telecommunications customer and will be billed at tariffed rates. These costs along with any other associated telecommunications costs are part of other General and Administrative Expenses and the telecommunications division will pay its share in accordance with the allocation using the General Allocator.

Payment Processing - For processing telecommunications payments, the electric system will charge the telecommunications division using the same terms and conditions available to other entities on a nondiscriminatory basis,.

Marketing and Advertising - Directly assignable marketing and advertising costs will be directly assigned. For example, a billboard presenting telecommunications service features will be assigned to the telecommunications division. A very small dollar amount of marketing expense is anticipated to be of a joint nature. Such joint marketing expenses will be allocated between the telecommunications division and the electric system using the ratio of marketing expenses directly assigned and attributed to electric utility services and telecommunications activities. To calculate the joint marketing expenses to be allocated to the telecommunications division, the joint marketing expenses would be multiplied by a fraction with the marketing expenses directly assigned and attributed to telecommunications services as the numerator and the sum of the marketing expenses directly assigned and attributed to telecommunications plus the marketing expenses directly assigned and attributed to electric utility services as the

denominator. EPB does not currently permit other entities to have bill-stuffing privileges in its electric bills and shall not allow the telecommunications division to have such ability, unless provided to other third-party telecommunications companies.

Vehicle Expense - To allocate vehicle expenses to telecommunications accounts, EPB will continue to use the current system in which detailed records of the costs to operate and maintain vehicles are maintained. These vehicle expenses, including depreciation and insurance, are allocated to accounts in accordance with vehicle use, which is normally determined by the work performed by the employees to whom they are assigned. The expenses for vehicles assigned to crews that perform construction and maintenance work are allocated to accounts on a cost-per-hour basis. For all other vehicles, the allocation basis is cost per mile.

Mapping System and Software - EPB maintains a computerized mapping system. Like most of the other internally developed systems, the mapping system was directly expensed, and there is no accumulated capitalized amount to amortize. All expenses, including modifying or updating the system or other expenses associated with mapping, will be allocated between the telecommunications division and the electric system using the route miles of facilities mapped.

Service Restoration - This is another software system for which the costs have been directly expensed as incurred. All expenses, including modifying or updating the system or other expenses of the service restoration system, will be allocated to the telecommunications division and the electric system on the basis of the direct labor of employees performing field repairs.

## VII.

### Code of Conduct

Regulatory Compliance - The telecommunications division of EPB will be subject to all rules and regulations of the TRA in the same manner and to the same extent as other

telecommunications service providers; including without limitation, rules and orders governing anti-competitive practices.

Treatment of Similarly-Situated Parties - The EPB shall process all similar requests for the services of the electric utility system and the telecommunications division in the same manner and within the same time period whether requested on behalf of an affiliate of the EPB or a third party.

Customer Information - Customer information obtained by the electric system of the EPB shall not be provided to the telecommunications division or to third parties unless the customer to which the customer information relates has given express written authorization to do so and then such information shall be provided by the EPB only to the extent authorized and only to the parties specifically authorized to receive it by the customer.

Billing and Collection for Telecommunications Services - It will be more than three (3) years before EPB would consider using its electric bills to bill any amounts due for its telecommunications division activities. Before EPB does any such consolidated billing, it will request permission from the TRA with notice of that request being given to the intervenors.

Promotional Inserts in Bills - In the event that the EPB elects to insert any advertising or promotional materials on behalf of the telecommunications division into the envelope of the monthly bill of the electric utility system, the EPB shall permit any third party to insert advertising and promotional materials of the same general type into the envelope, after sufficient public notice, upon request, on the same terms and on a fair and non-discriminatory basis. For this purpose, sufficient notice is deemed to be a public notice published in at least two newspapers of general circulation at a minimum of 60 days prior to including the advertising and promotional inserts of the telecommunications division in the envelope for the monthly bills.

Separate Telephone Numbers - The EPB shall publish separate telephone numbers for its electric utility system and its telecommunications division. Nothing shall prevent the EPB from maintaining an internal telephone system commonly shared by the telecommunications division and the electric system.

Anti-Competitive Inducements - The EPB shall not state in any advertising, promotional materials, or sales efforts, that consumers who purchase products or services from its telecommunications division will receive preferential treatment in the provision of services from its electric utility system or that any other benefit will inure to customers resulting from its dealings with the telecommunications division.

Sales References by Utility Personnel - The personnel of the electric utility system shall not specify a preference for any product or service of the telecommunications division over like services of a third party provider.

Joint Marketing of Regulated and Nonregulated Services - The electric system and the telecommunications division of the Electric Power Board of Chattanooga may jointly offer their respective products and services to customers provided that the customer is informed (a) of the separate identities of each and (b) that the products and services of the electric utility system are distinct and separately priced from the offerings of the telephone division and the customer may select one without the other.

Loans and Credit Guarantees - The telecommunications division may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of EPB's electric system.

General Code of Conduct Provisions - EPB may not discriminate between the telecommunications division and any other entity in the provision or procurement of goods, services, and information, or in the establishment of standards.

EPB shall account for all transactions with the telecommunications division in accordance with generally accepted accounting principles or accounting principles in accordance with the FCC regulations, or accounting principles approved by the TRA.

## VII.

### Reporting Requirements

The telecommunications division of the EPB shall report to the TRA on an annual basis:

- (a) the name and address of all affiliated divisions;
- (b) all contracts entered into with affiliated divisions or entity, and all transactions undertaken with any affiliates without a written contract;
- (c) the amount of affiliate transactions by affiliate by account charged;
- (d) the basis used to record affiliate transactions (i.e. book value, fair market value, tariff, fully distributed cost);
- (e) total costs allocated or charged back to each division;
- (f) updates of the allocation factors used to allocate costs between the electric system and the telecommunications division;
- (g) the financial statement data, as recorded for each EPB division, in whatever format the TRA requires, including a copy of EPB's audited financial data for the electric system and for the telecommunications division and on a consolidated basis.<sup>3</sup>
- (h) a computation of all tax allocations for regulatory purposes as follows:
  - (1) Property Taxes. Computation will be net book value for taxable assets multiplied by the current City or County tax rate as appropriate. An

---

<sup>3</sup>Since the FERC and the FCC have different account requirements, the consolidated statement may not comply with either.

offsetting adjustment will be made to remove any In Lieu Of Taxes currently paid by EPB, which are surrogate payments for property and other taxes.

- (2) Sales Taxes. Computation will be the purchases of taxable goods and services during the reporting period multiplied by the applicable sales tax rate. EPB will show such an amount as totally expensed and will not reflect that portions of it may have been capitalized.
- (3) Other State and Local Taxes. Computation will be based on applicable tax code.
- (4) Federal Income Tax. Calculations will involve using the current federal corporate income tax rate multiplied by the net taxable income of the telecommunications division. EPB will make adjustments and deferments to taxes as appropriate and as used by other entities. For example, taxes will be calculated using allowable tax depreciation rather than book depreciation.

The EPB shall make available the books, accounts, memoranda, contracts and records of the electric system and the telecommunications division and any other affiliated company upon request of the TRA.

The EPB shall maintain books of account and supporting documentation in sufficient detail to permit verification of compliance with the cost assignment and allocation principles and the Code of Conduct approved by the TRA.

The TRA may order an audit to be performed no more frequently than on an annual basis of all matters deemed relevant by the selected auditor, and EPB and its affiliated divisions shall cooperate fully with all requests necessary to perform the audit.<sup>4</sup> The audit shall be provided to the TRA not later than six (6) months after the onset of the audit, and provided to EPB not later than sixty (60) days thereafter.

---

<sup>4</sup>The TCTA contends that a provision should be added to require EPB to pay the cost of any independent audit or have the TRA assess the cost. EPB contends that such a provision would violate Tennessee Code Annotated § 7-52-401 by imposing on EPB a cost it does not impose on other telephone companies.

The EPB maintains an internal audit staff, which will be tasked annually with testing the compliance of the telecommunications division and the electric system with the Conditions set forth herein or supplemental conditions or provisions ordered by the TRA. Any written finding or work papers associated with such compliance tests shall be made available to the TRA.

Annually, the internal auditors for the EPB shall issue a statement detailing the EPB's compliance with the Code of Conduct.

The TRA shall have access to personnel of both the telecommunications division and the electric system who will be capable of responding to TRA inquiries with respect to, but not limited to, affiliate transactions and the nature of direct and indirect charges and billings between affiliates.

The EPB shall submit all other reports that are required to be filed with the TRA by Competing Telecommunications Service Providers.

Respectfully submitted,

FARRIS, MATHEWS,  
BRANAN & HELLEN, P.L.C.

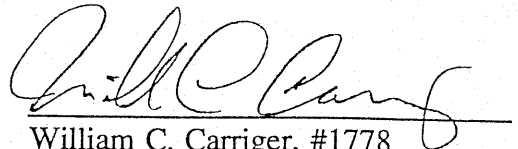
By:

Charles B. Welch, Jr.

Charles B. Welch, Jr., #5593  
Attorney for Tennessee Cable  
Telecommunications Association  
511 Union Street, Suite 2400  
Nashville, Tennessee 37219  
(615)726-1200

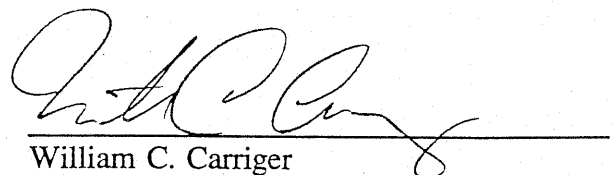


STRANG, FLETCHER, CARRIGER,  
WALKER, HODGE & SMITH, P.L.L.C.

By:   
William C. Carriger, #1778  
Mark W. Smith, #16908  
Attorneys for Electric Power Board  
of Chattanooga  
400 Krystal Building  
One Union Square  
Chattanooga, TN 37402-2514

CERTIFICATE OF SERVICE

I, William C. Carriger, hereby certify that I have served a copy of the foregoing document on the parties on the attached list, by depositing copy of same in the U.S. Mail, postage prepaid this the 3rd day of November, 1998.

  
William C. Carriger

Dennis P. McNamee, Esquire  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Patrick Turner, Esquire  
BellSouth Communications, Inc.  
333 Commerce Street  
Suite 2101  
Nashville, Tennessee 37201-3300

Val Sanford, Esquire  
Gullett, Sanford, Robinson & Martin  
P.O. Box 198888  
Nashville, Tennessee 37219-8888

James P. Lamoureux, Esquire  
AT&T Communications of the South  
Central States, Inc.  
1200 Peachtree Street N.E.  
Room 4060  
Atlanta, Georgia 30309

Charles B. Welch, Jr., Esquire  
Farris, Mathews, Gilman, Branan & Hellen, P.L.C.  
2400 Nashville City Center  
511 Union Street  
Nashville, Tennessee 37219

Vance L. Broemel  
Assistant Attorney General  
Consumer Advocate Division  
Cordell Hull Building  
Second Floor  
425 Fifth Avenue, North  
Nashville, Tennessee 37243-0500

Henry Walker, Esquire  
Attorney for ACSI & NextLink  
Boult, Cummings, Conners & Berry  
P.O. Box 198062  
Nashville, Tennessee 37219

Dana Shaffer, Esquire  
NextLink Tennessee, LLC  
105 Malloy Street, Suite 300  
Nashville, Tennessee 37201

Jon E. Hastings, Esquire  
Boult, Cummings, Conners & Berry  
P. O. Box 198062  
Nashville, Tennessee 37219

Michael R. Knauff  
Tennessee Power Company  
4612 Maria Street  
Chattanooga, Tennessee 37411